

AMENDED IN SENATE MARCH 29, 2005

**SENATE BILL**

**No. 857**

**Introduced by Senator Kuehl**

February 22, 2005

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An act to amend Section ~~40001 of the Health and Safety Code, relating to air quality~~ 5901 of the Fish and Game Code, and to amend Section 136.1 of, and to add Article 3.5 (commencing with Section 156) to Chapter 1 of Division 1 of, the Streets and Highways Code, relating to fish passages.

LEGISLATIVE COUNSEL'S DIGEST

SB 857, as amended, Kuehl. ~~Air quality: districts: rules and regulations~~ Fish passages.

Existing law provides that the Department of Transportation has full possession and control of all state highways. Existing law authorizes the department to enter into major damage mitigation contracts to perform major damage repairs and operations on state highways caused by sudden, unforeseen events. Existing law requires work performed under these contracts to be limited to physical construction, demolition, debris removal, and traffic control.

This bill would authorize work performed under these contracts to include remediation of barriers to fish passage. The bill would require the department, in collaboration with the Department of Fish and Game, to prepare an annual report to the Legislature describing the status of the department's progress in locating, assessing, and remediating barriers to fish passage, as defined, and to submit a list of priority sites for remediation on coastal streams to the Legislature, as specified. The bill would require the department also to complete assessments of potential barriers to anadromous fish prior to commencing any project using state or federal transportation funds. The bill would require the department to submit these assessments to

*the department of Fish and Game to be added to the CALFISH database. The bill would also require projects to be constructed without presenting barriers to fish passage.*

*Existing law prohibits the construction or maintenance, in certain fish and game districts, of any device or contrivance that prevents, impedes, or tends to prevent or impede, the passing of fish up and down stream.*

*This bill would revise the fish and game districts in which this prohibition applies.*

~~Existing law requires air pollution control districts and air quality management districts to adopt and enforce rules and regulations to achieve and maintain the state and federal ambient air quality standards, including, but not limited to, a process to approve alternative methods of complying with emission control requirements that provide equivalent emission reductions, emissions monitoring, or recordkeeping, and provision for the prevention and abatement of air pollution episodes that cause discomfort or health risks to, or damage to the property of, a significant number of persons or class of persons.~~

~~This bill would make technical, nonsubstantive changes in the provision relating to the prevention and abatement of air pollution episodes that cause discomfort or health risks to, or damage to the property of, a significant number of persons or class of persons.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 40001 of the Health and Safety Code is~~  
2     ~~amended to read:~~

3     ~~SECTION 1. The Legislature finds and declares all of the~~  
4     ~~following:~~

5     ~~(a) The decline of naturally spawning salmon and steelhead~~  
6     ~~trout is primarily a result of the loss of appropriate stream~~  
7     ~~habitat and the inability of fish to get access to habitat,~~  
8     ~~according to recent reports to the Fish and Game Commission~~  
9     ~~and by the Department of Fish and Game.~~

10    ~~(b) Increasing the naturally spawning salmon and steelhead~~  
11    ~~trout populations in California would provide a valuable public~~  
12    ~~resource, employment opportunities, and substantial economic~~  
13    ~~benefits to the state.~~

1 (c) Federal, state and local governments and nonprofit  
2 organizations are spending hundreds of millions of public dollars  
3 in California protecting and restoring habitat for salmon and  
4 steelhead trout through watershed and fishery restoration  
5 programs, with the state alone spending over two hundred  
6 million dollars for these purposes in the past five years.

7 (d) The California Department of Transportation has  
8 maintenance, construction, and oversight responsibility for the  
9 state's roads, including approximately 5000 stream crossings on  
10 coastal streams.

11 (e) Stream crossings on roads frequently present barriers to  
12 the migration of fish, and there is an extensive lack of  
13 information regarding the number and extent of existing barriers  
14 to fish migration at state road stream crossings.

15 (f) Having this information would enable the department to  
16 better predict the time and funding required to complete  
17 transportation projects.

18 (g) Substantial savings to the state would result from improved  
19 ability to deliver transportation projects within their budgets and  
20 on time, and substantial benefit to the state's salmon and  
21 steelhead trout populations would result from remediation of  
22 barriers to fish passage at stream crossings

23 SEC. 2. Section 5901 of the Fish and Game Code is amended  
24 to read:

25 5901. Except as otherwise provided in this code, it is  
26 unlawful to construct or maintain in any stream in Districts 1,  
27  $1\frac{3}{8}$ ,  $1\frac{1}{2}$ ,  $1\frac{7}{8}$ , 2,  $2\frac{1}{4}$ ,  $2\frac{1}{2}$ ,  $2\frac{3}{4}$ , 3,  $3\frac{1}{2}$ , 4,  $4\frac{1}{8}$ ,  $4\frac{1}{2}$ ,  $4\frac{3}{4}$ , 11, 12,  
28 13, 23, and 25, any device or contrivance ~~which~~ that prevents,  
29 impedes, or tends to prevent or impede, the passing of fish up  
30 and down stream.

31 SEC. 3. Section 136.1 of the Streets and Highways Code is  
32 amended to read:

33 136.1. The department may enter into major damage  
34 mitigation contracts to perform major damage repairs and  
35 operations on state highways when caused by sudden, unforeseen  
36 events such as storms, landslides, flooding, high surf,  
37 earthquakes or other geological action, or civil unrest. These  
38 contracts may be entered into prior to the onset of major damage  
39 in order to retain the contractor in readiness to respond to  
40 incidents as needed. Work performed under each contract shall

1 be limited to physical construction, demolition, debris removal,  
2 *remediation of barriers to fish passage*, and traffic control. The  
3 work shall be considered, for funding purposes, as a public works  
4 construction project.

5 *SEC. 4. Article 3.5 (commencing with Section 156) is added*  
6 *to Chapter 1 of Division 1 of the Streets and Highways Code, to*  
7 *read:*

8  
9 *Article 3.5. Barriers to Fish Passage*

10  
11 *156. For purposes of this article, the following definitions*  
12 *shall apply:*

13 (a) *“Fish passage” means the ability of an anadromous fish to*  
14 *access appropriate habitat at all points in its life cycle, including*  
15 *spawning and rearing.*

16 (b) *“Department” means the Department of Transportation.*

17 *156.1. In collaboration with the Director of the Department*  
18 *of Fish and Game, the Director of the Department of*  
19 *Transportation shall prepare an annual report to the Legislature*  
20 *describing the status of the department’s progress in locating,*  
21 *assessing, and remediating barriers to fish passage. This report*  
22 *shall be given to the Legislature by October 31 of each year*  
23 *through the year 2020.*

24 *156.2. The department shall complete surveys of all culverts*  
25 *on the state highway system on coastal streams where*  
26 *anadromous fish are, or historically were, found to assess the*  
27 *presence of barriers to fish passage, add the resulting coastal*  
28 *stream data to the database maintained by the Department of*  
29 *Fish and Game that is currently known as CALFISH, and in*  
30 *collaboration with the Department of Fish and Game, submit a*  
31 *list of priority sites for remediation on coastal streams to the*  
32 *Legislature by December 31, 2009. The department shall use*  
33 *methodologies approved by the Department of Fish and Game.*

34 *156.3. The department shall pursue development of a*  
35 *programmatic environmental review process with appropriate*  
36 *state and federal regulatory agencies for remediating barriers to*  
37 *fish passage that will streamline the permitting process for*  
38 *projects. The department shall include a description of its*  
39 *progress on this review process in the report specified in Section*  
40 *156.1.*

1     156.4. For any project using state or federal transportation  
2 funds programmed after January 1, 2006, the department shall  
3 insure that, if the project affects a stream crossing on a stream  
4 where anadromous fish are, or historically were, found, an  
5 assessment of potential barriers to fish passage is done prior to  
6 commencing project design. The department shall submit the  
7 assessment to the Department of Fish and Game and add it to the  
8 CALFISH database. If any structural barrier to passage exists,  
9 remediation of the problem shall be designed into the project by  
10 the implementing agency. New projects shall be constructed so  
11 that they do not present a barrier to fish passage. When barriers  
12 to fish passage are being addressed, plans and projects shall be  
13 developed in consultation with the Department of Fish and  
14 Game.

15     156.5. For any repair or construction project using state or  
16 federal transportation funds that affects a stream crossing on a  
17 stream where anadromous fish are, or historically were, found,  
18 the department shall perform an assessment of the site for  
19 potential barriers to fish passage and submit the assessment to  
20 the Department of Fish and Game.

21     ~~40001. (a) Subject to the powers and duties of the state~~  
22 ~~board, the districts shall adopt and enforce rules and regulations~~  
23 ~~to achieve and maintain the state and federal ambient air quality~~  
24 ~~standards in all areas affected by emission sources under their~~  
25 ~~jurisdiction, and shall enforce all applicable provisions of state~~  
26 ~~and federal law.~~

27     ~~(b) The district rules and regulations may, and at the request of~~  
28 ~~the state board shall, provide for the prevention and abatement of~~  
29 ~~air pollution episodes that, at intervals, cause discomfort or~~  
30 ~~health risks to, or damage to the property of, a significant number~~  
31 ~~of persons or class of persons.~~

32     ~~(c) Prior to adopting any rule or regulation to reduce criteria~~  
33 ~~pollutants, a district shall determine that there is a problem that~~  
34 ~~the proposed rule or regulation will alleviate and that the rule or~~  
35 ~~regulation will promote the attainment or maintenance of state or~~  
36 ~~federal ambient air quality standards.~~

37     ~~(d) (1) The district rules and regulations shall include a~~  
38 ~~process to approve alternative methods of complying with~~  
39 ~~emission control requirements that provide equivalent emission~~  
40 ~~reductions, emissions monitoring, or recordkeeping.~~

~~(2) A district shall allow the implementation of alternative methods of emission reduction, emissions monitoring, or recordkeeping if a facility demonstrates to the satisfaction of the district that those alternative methods will provide equivalent performance. Any alternative method of emission reduction, emissions monitoring, or recordkeeping proposed by the facility shall not violate other provisions of law.~~

~~(3) If a district rule specifies an emission limit for a facility or system, the district shall not set operational or effectiveness requirements for any specific emission control equipment operating on a facility or system under that limit. Any alternative method of emission reduction, emissions monitoring, or recordkeeping proposed by the facility shall include the necessary operational and effectiveness measurement elements that can be included as permit conditions by the district to ensure compliance with, and enforcement of, the equivalent performance requirements of paragraphs (1) and (2). Nothing in this subdivision limits the district's authority to inspect a facility's equipment or records to ensure operational compliance. This paragraph shall apply to existing rules and facilities operating under those rules.~~